

Paper No. _____

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

JONATHAN D. **ZOOK**, DAVID W. JORDAN, DEAN M. WILLARD,
GEORGE JONES, AND MICHAEL COSMAN,
Junior Party ("PBT")
(U.S. Patents 6,525,168 and 6,723,827),

v.

JONATHAN D. **ZOOK**, SUSAN E. DEMOSS,
DAVID W. JORDAN AND CHANDRA B. RAO
Senior Party ("PRC")
(U.S. Application 10/644,389).

Patent Interference No. 105,555 (MPT)
(Technology Center 1700)

SENIOR PARTY ZOOK (PRC) MOTION 2
(Miscellaneous Motion Requesting Acceptance of an
Unintentionally Delayed Request for Priority Benefit)

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1 **I. PRECISE RELIEF REQUESTED**

2 Senior Party Zook (PRC) moves under 37 C.F.R. § 41.121(a)(3) to perfect the previously
3 claimed 35 U.S.C. § 120 benefit of priority of U.S. Patent Application Nos. 08/802,130 and
4 09/318,500, now U.S. Patent Nos. 5,912,319, and 6,232,401, respectively. Specifically, PRC
5 seeks to amend the specification of involved Application No. 10/644,389 to properly recite the
6 alternate priority chain with the correct relationships between applications to perfect a claim for
7 35 U.S.C. § 120 benefit of these earlier applications. If necessary, PRC also seeks to amend the
8 '389 application's parent, now abandoned Application No. 10/302,177.

9 **II. EVIDENCE IN SUPPORT OF THE MOTION**

10 In accordance with ¶121.5.1 of the Standing Order, a list of exhibits cited in support of
11 this motion is attached as Appendix 1.

12 **III. STATEMENT OF MATERIAL FACTS**

13 In accordance with ¶121.5.2 of the Standing Order, and the Order filed August 29, 2007
14 [Paper No. 22], PRC's statement of material facts supporting this motion is attached as Appendix
15 2. PRC's material facts will be referred to as "MF" in this motion.

16 **IV. REASONS FOR GRANTING RELIEF REQUESTED**

17 **A. Introduction**

18 The present interference was declared on the basis of a single count, Count 1,
19 corresponding to claim 6 of U.S. Patent 6,525,168. Paper No. 1, p. 5. In the Declaration of
20 interference, PRC's involved Application No. 10/644,389 ("the '389 application") was accorded
21 the benefit of four (4) prior-filed applications for Count 1, whereby PRC was accorded an
22 effective filing date of February 19, 1997. Paper 1, p. 6. Upon review of the file histories of the
23
24

1 involved '389 application and the four prior-filed applications to which PRC is accorded benefit,¹
2 PRC discovered that a previously claimed benefit of priority through an alternative chain of
3 applications that includes an application which is not part of the basis for accorded benefit in the
4 interference, includes errors in the relationships between applications. MFs 4-6.

5 The somewhat complex priority chains relevant to the involved '389 patent are easily
6 understood by reference to Exhibit 1003. Exhibit 1003 shows all relevant parent applications,
7 numbered in order of filing dates, and their relationships. In Exhibit 1003, the proper priority
8 benefit chains are shown connected by solid lines, while the improper alternative priority chain as
9 recited in the '389 application is shown illustrated by a line composed of dashes.

10 After declaration of the present interference, PRC became aware that the alternate priority
11 chain recited in parent U.S. Application No. 10/302,177 ("the '177 application") is ambiguous
12 while the alternate priority chain recited in the involved '389 application improperly indicates that
13 the application is a continuation-in-part (CIP) of U.S. Patent Application No. 09/318,500 ("the
14 '500 application"), an application not included in the application to which movant was accorded
15 priority benefit. MFs 5-6. However, there was not copendency between the '500 application,
16 which issued as U.S. Patent 6,232,401 on May 15, 2001, and either the '177 application, filed on
17 November 21, 2002, or the '389 application, filed on August 19, 2003; neither of these
18 applications can be a CIP of the '500 application. MF 7. Rather, in accordance with the alternate
19 priority claim, the '177 application is a continuation of another parent application, U.S. Patent

21 ¹ Specifically, PRC was accorded benefit of the filing dates of prior U.S. Patent Application Nos.
22 10/302,177, 09/756,573, 08/928,972 ("the '972 application"), and 08/802,130 ("the '130
23 application").
24

1 Application No. 09/756,573 ("the '573 application"), which is a CIP of the '500 application,
2 while the '389 application is a continuation of the '177 application. MF 8.

3 PRC seeks to perfect the '389 application's alternate priority claim by amending the first
4 paragraph of the '389 application to properly recite the relationship between the '389 application
5 and the '500 application. This previously authorized miscellaneous motion requests the Board to
6 accept an unintentionally delayed claim for 35 U.S.C. § 120 benefit of an earlier filed application.

7 **B. PRC is Entitled to Claim the Benefit of the '500 Application (No. 3)**

8 Requirements sufficient for claiming the benefit of an earlier filing date are set forth in
9 part in 37 C.F.R. § 1.78(a). MF 9. This rule imposes six requirements which must be met in
10 order for an application to receive the benefit of an earlier-filed application's filing date.
11 Specifically, 37 C.F.R. § 1.78(a) requires: (i) copendency; (ii) common inventorship; (iii)
12 compliance with 35 U.S.C. § 112, first paragraph; and (iv) compliance with Rule 1.53(b) or (d);
13 and 37 C.F.R. § 1.78(b) requires: (v) reference in the application to each prior-filed application,
14 identifying the prior application by application number and indicating the relationship of the
15 applications, (vi) which reference must be submitted within the later of four months from the
16 actual filing date of the later-filed application or sixteen months from the filing date of the prior-
17 filed application. Only the fifth and sixth requirements are in issue with regard to the alternative
18 priority claim. MF 10.

19 The first requirement of Rule 1.78, copendency, is satisfied. MFs 9 & 11. The '389
20 application (No. 6) was filed on August 19, 2003, as a continuation of the '177 application (No.
21 5). The '177 application (No. 5) was filed on November 21, 2002, as a continuation of the then-
22 pending '573 application (No. 4), which did not issue until January 21, 2003. The '573
23 application (No. 4) was filed on January 8, 2001, as, *inter alia*, a CIP of the then-pending '500
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1 application (No. 3), which did not issue until May 15, 2001. The '500 application (No. 3) was
2 filed on May 25, 1999, and was a divisional of the then-pending '130 application (No. 1), which
3 did not issue until June 15, 1999. Thus, effective copendency for purposes of claiming priority
4 existed.

5 The second requirement of Rule 1.78 is that the later filed application must have at least
6 one inventor in common with the prior-filed application. MF 9. Each application of the alternate
7 priority chain, the '130, '500, '573, '177, and '389 applications names, *inter alia*, Jonathan D.
8 (Doherty) Zook, Susan E. DeMoss (formerly known as Suzanna Gibson DeMoss and Suzanna
9 Gibson), Chandra B. Rao, and David W. (Weldon) Jordan. MF 12. Accordingly, the common
10 inventor requirement of § 1.78(a)(1) is satisfied.

11 The third requirement of Rule 1.78 is that the prior filed application must disclose the
12 invention claimed in at least one claim of the later filed application in accordance with the first
13 paragraph of section 112. MF 9. Pending claims in the '389 application (No. 6) have been
14 accorded the benefit of the '130 application. Paper 1, pp. 5-6. This benefit flowing from the '130
15 application through the '972, '573, and '177 applications to the '389 application is unchallenged.
16 MF 13. The '500 application is a divisional of the '130 application having an identical
17 specification. MF 14. As such, the '500 application discloses each invention disclosed in the
18 '130 application and must also, therefore, disclose the invention claimed in at least one claim of
19 the later filed application, thereby satisfying the disclosure requirement of § 1.78(a)(1).

20 The fourth requirement of Rule 1.78 is that the prior application must be entitled to a filing
21 date as set forth in § 1.53(b) or § 1.53(d) and include the basic filing fee as set forth in § 1.16.
22 MF 9. The '500 application (No. 3) was filed as a divisional of the '130 application (No. 1) under
23 37 C.F.R. § 1.53(b). MF 14. The statutory filing fee and surcharge, with authorization to charge
24

1 any additional amounts due, was paid in the Response to Notice to File Missing Parts, filed July
2 16, 1999, within the two month deadline. MF 15. Accordingly, the requirement that the prior
3 application be entitled to a filing date is satisfied.

4 The fifth requirement of Rule 1.78 is that the later-filed application must reference each
5 prior-filed application, identifying each by application number and indicating the relationship of
6 the applications as set forth in § 1.78(b). MF 9. This requirement has not been fully met. The
7 first paragraph of the '389 application (No. 6) was amended to recite the '500 application (No. 3)
8 by its application number and indicates that the '389 application is a CIP of the '500 application.
9 MF 16. While accurately setting forth the application number and correctly characterizing the
10 nature of the applications' disclosures, the recited relationship between the '389 and '500
11 applications is not correct. MF 17. Similarly, the relationship between the '177 and '500
12 applications recited in the '177 application is ambiguous and not necessarily correct. MF 18.

13 The sixth requirement of Rule 1.78 is that the required reference to each prior-filed
14 application must be made within the later of four months from the actual filing date or sixteen
15 months from the filing date of the prior-filed application. MF 9. Reference to the prior-filed '500
16 application (No. 3) in the '389 application (No. 6) was made within four months of the actual
17 filing date by, *inter alia*, amendment of the specification at the time of filing to recite "[t]his
18 application [the '389 application] is ... also a continuation-in-part of U.S. Patent Application No.
19 09/318,500." MF 19. Exhibit 1006, paragraph 9, page 2. Similarly, the specification of the '177
20 application was amended at the time of filing to recite "[t]his application is ... also a
21 continuation-in-part of U.S. Patent Application No. 09/318,500" MF 20. Exhibit 1007, paragraph
22 9, page 2. However, the amendments to the specifications did not clearly set forth the relationship
23 of the relevant application.

1 Thus, it is only through error in the recited relationship between the '389 application and
2 the '500 application and between the '177 application and the '500 application that the '389 and
3 '177 applications would not be entitled to claim priority to the '130 application through a priority
4 chain that involves the '500 application.

5 **C. PRC is Entitled to Perfect the Alternate Priority Benefit Chain**

6 **1. Amendment of Priority Claim is Proper where Delay is Unintentional**

7 Requirements sufficient for claiming the benefit of an earlier filing date after the time
8 period specified by § 1.78(a)(2), namely, later than four months from the filing date of the later-
9 filed application and sixteen months from the filing date of the prior-filed application, are set
10 forth in part in 37 C.F.R. § 1.78(a)(3). MF 21. This rule imposes three requirements to allow an
11 unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120. Specifically, it
12 requires that a petition be accompanied by: (i) the required reference to the prior-filed application;
13 (ii) the surcharge set forth in § 1.17(t); and (iii) a statement that the entire delay from the date the
14 claim was due has been unintentional. Petitions for the '389 and '177 applications are attached
15 (Appendices 3 and 5, respectively).

16 The first requirement for a grantable petition under Rule 1.78(c) is the required reference
17 to the prior-filed application. MF 21. The required reference is provided for the '389 application
18 (No. 6) by amendment (Appendix 4). If the Board determines that the '177 application (No. 5)
19 should similarly be amended, PRC petitions the Board under 37 C.F.R. § 1.78 and/or § 1.182 to
20 enter the corresponding amendment for that case (Appendix 6). MF 22. These amendments each
21 correct the improperly recited relationship between the applications as discussed above such that
22 the alternate priority chain flows correctly from the '130 application through the '500, '573, and
23 '177 application to the '389 application as set forth by the solid line in Exhibit 1003.

1 The second requirement under Rule 1.78(c), the required surcharge as set forth in
2 § 1.17(t), is met by authorization to charge a deposit account provided herewith (\$1,410) for both
3 the '389 application (MF 23) and for, if deemed necessary, the '177 application (MF 24).

4 The third requirement under Rule 1.78(c), a statement that the entire delay from the date
5 the claim was due has been unintentional, is also provided herewith for both the '378 application
6 (No. 6) and for the '177 application (No. 5).

7 Thus, the petition for acceptance of Applicants' unintentionally delayed claim for the
8 benefit of priority under 35 U.S.C. § 120 is a grantable petition for both the '389 application and,
9 if deemed necessary, the '177 application, which would perfect the alternative priority claim.

10 **2. The Evidence Unambiguously Establishes that the Entire Period of**
11 **Delay in Remedying the Error in the Priority Claim was Unintentional**

12 The only real issues presented by the present motion are whether the failure to properly
13 recite the relationship between the '389 application, and if it is necessary for the grant of relief,
14 the '177 application, and the other applications of the alternate priority chain that flows through
15 the '500 application was unintentional and remained so until presentation of the present motion
16 and petition. The facts indicate that the original error and the entire delay in correcting the error
17 in the recited relationship between applications was unintentional.

18 The first paragraph of the '573 application (No. 4), as filed on January 8, 2001, states:

19 This application is a continuation-in-part of U.S. Patent Application
20 No. 08/928,972 filed September 12, 1997, which is a continuation-
21 in-part of now U.S. Patent No. 5,912,319. Also, this application is a
22 continuation-in-part of U.S. Patent Application No. 09/318,500
23 filed May 25, 1999, which is a division of now U.S. Patent No.
24 5,912, 319. This application also claims the benefit of U.S.
provisional application no. 60/182,396 filed February 14, 2000 and
U.S. provisional application no. 60/215,548 filed June 30, 2000.

1 MF 25. Upon receiving a corrected filing receipt with errors in, *inter alia*, the domestic priority
2 data as claimed by Applicants, a corrected filing receipt was requested. MF 26. The Request for
3 Corrected Filing Receipt again recited, *inter alia*, the correct relationship between the '500 and
4 other applications, namely, "[t]his application [the 09/756,573 application] is also a CIP of
5 09/318,500 05/25/1999 PAT 6,232,401 which is a DIV of 08/802,130 02/19/97 PAT 5,912,319."
6 MF 26. This relationship is correctly recited in the first paragraph of U.S. Patent No. 6,509,418,
7 which issued from the '573 application on January 21, 2003. Exhibit 1014.

8 On November 21, 2002, the '177 application (No. 5) was filed as a continuation of the
9 '573 application (No. 4). MF 27. The application transmittal directed the amendment of the
10 specification to recite the claimed benefit of priority; the directed amendment recited:

11 This is a continuation of U.S. Patent Application No. 09/756,573,
12 filed January 8, 2001, which is a continuation-in-part of U.S. Patent
13 Application No. 08/928,972, filed September 12, 1997, which is a
14 continuation-in-part of now U.S. Patent No. 5,912,319; and also a
15 continuation-in-part of U.S. Patent Application No. 09/318,500,
16 filed May 25, 1999, which is a division of now U.S. Patent No.
17 5,912,319; and claims the benefit of U.S. Provisional Application
18 No. 60/182,396, filed February 14, 2000, and U.S. Provisional
19 Application No. 60/215,548, filed June 30, 2000, all of which are
20 incorporated herein by reference.

21 Exhibit 1007, paragraph 9, page 2. As written, the directed amendment was intended to convey
22 that the '177 application (No. 5) was a continuation of the '573 application (No. 4) and that the
23 '573 application was a continuation-in-part of the '972 application (No. 2) and a continuation-in-
24 part of the '500 application (No. 3). MF 28. As stated by both Messers Makrogiannis and Uhl in
their declarations (Exhibit 1027, ¶¶ 13, 15-17, and 19, and Exhibit 1023, ¶¶ 33-34, 37, 39, and 41),
they did not realize that the recited claim to priority in the '177 application (No. 5) was
ambiguous at the time it was initially made or at any time afterward until being informed of such
by interference counsel. MF 29. As stated by Mr. Lambert in his declaration (Exhibit 1022,

¶¶28-29), when he became involved with the prosecution of the then pending '177 application (No. 5), he noticed a discrepancy between the directed amendment to the priority claim, but did not notice that the priority chain recited was ambiguous. Exhibit 1022, ¶¶32, 34, and 36. MF 30. As they were at all times unaware of the ambiguity in the priority claim, the failure to correct the recited relationship between the applications in the priority chain was and remained unintentional at all times.

On August 19, 2003, the '389 application (No. 6) was filed as a continuation of the '177 application (No. 5). As stated by Mr. Lambert in his declaration (Exhibit 1022, ¶30), he filed the '389 application (No. 6) with some changes in punctuation to the priority claim, but did not realize that the alternative priority chain could be construed to incorrectly suggest the '389 application (No. 6) claimed priority directly to the '500 application (No. 3). Exhibit 1022, ¶31.. While he noticed some discrepancies between the directed amendment and what was recited in the original Filing Receipt, and he requested a Correct Filing Receipt, he did not appreciate any deficiency in the alternative priority chain. Exhibit 1022, ¶33. Further, at no time was he aware of any deficiency in the priority claims involving the '500 application (No. 3) until being informed of such deficiencies by interference counsel. Exhibit 1022, ¶34. MF 30.

As stated by Mr. Uhl in his declaration, he also did not realize that the alternative priority chain could be construed to incorrectly suggest the '389 application (No. 6) claimed priority directly to the '500 application (No. 3) (Exhibit 1022, ¶36), did not appreciate any deficiency in the alternative priority chain when Mr. Lambert obtained a corrected filing receipt (Exhibit 1022, ¶38), and was at no time aware of any deficiency in the priority claims involving the '500 application (No. 3) until being informed of such deficiencies by interference counsel (Exhibit 1022, ¶39). MF 29.

1 Moreover, not being the basis for a benefit claim sought in the present interference,
2 nothing occurred during the prosecution of related applications that alerted them to any deficiency
3 in the alternative priority claim. The sole priority issue that arose during prosecution of the '573,
4 '177, and '389 applications was whether, during prosecution of the '389 application, there was
5 support for the claims in the '389 application in the '130 application. MF 31.

6 If no one was aware of any error in the recited relationship between applications until very
7 recently, where each and every application was identified by application number and the nature of
8 the applications' disclosure relative to one another was correctly set forth, how could the
9 ambiguity or error in the recited relationship between applications be anything but unintentional?

10 **V. CONCLUSION**

11 For the reasons set forth above, PRC respectfully requests that the Board grant this motion
12 and associated petition (Appendix 3) to accept an unintentionally delayed claim for 35 U.S.C.
13 § 120 benefit for the '389 application, enter the amendment setting forth the proper alternate
14 priority claim (Appendix 4), and, if necessary to amend the '177 application (No. 5), the related
15 petition (Appendix 5) under Rules 1.78 and/or 1.182 to enter the corresponding amendment for
16 that case (Appendix 6), to perfect the alternative priority benefit claim involving Application No.
17 09/318,500 (No. 3).

18
19 Date: November 30, 2007

Respectfully submitted,

20 By: /Jerry D. Voight/
21 Jerry D. Voight
Registration No. 23,020

22 Counsel of Record for Senior Party Zook
23
24

APPENDIX 1

List of Exhibits

- 1003:** Chart captioned "Senior Party Zook (PRC) Involved Application Family Tree."
- 1006:** Application Transmittal for Application No. 10/644,389, filed August 19, 2003.
- 1007:** Application Transmittal for Application No. 10/302,177, filed November 21, 2002.
- 1008:** Declaration and Power of Attorney filed for Application No. 10/302,177 on November 21, 2002.
- 1009:** Declaration and Power of Attorney filed for Application No. 09/756,573 on June 12, 2001 in Response to Notice to File Missing Parts of Application.
- 1010:** Declaration and Power of Attorney filed for Application No. 10/644,389 on August 19, 2003.
- 1014:** Copy of U.S. 6,509,418 B1, issued from Application No. 09/756,573.
- 1022:** Declaration of William R. Lambert, dated October 1, 2007.
- 1023:** Declaration of William J. Uhl, dated October 2, 2007.
- 1026:** Request for Corrected Filing Receipt for Application No. 09/756,573, filed June 12, 2001.
- 1027:** Declaration of Philippe N. Makrogiannis, dated November 8, 2007.
- 1028:** Application Transmittal for Application No. 09/318,500, filed May 25, 1999.
- 1029:** Copy of U.S. 6,232,401, issued from Application No. 09/318,500.
- 1031:** Copy of Decision on Petition dated October 19, 2007, reviving Application No. 10/302,177, establishing continuity with continuing Application No. 10/644,389.
- 1032:** Application Transmittal for Application No. 09/756,573, filed January 8, 2001.
- 1033:** Copy of U.S. 5,912,319, issued from Application No. 08/802,130.
- 1034:** Copy of Response to Notice to File Missing Parts filed July 16, 1999, in response to Notice dated June 16, 1999, with a due date of August 16, 1999, for response, in connection with the '500 application.
- 1035:** Copy of Declaration for Patent Application filed with Application No. 09/756,573.

APPENDIX 2

Statement of Material Facts

1. Interference No. 105,555 (MPT), declared July 10, 2007, involves U.S. Patent Nos. 6,525,168 ("the '168 patent") and 6,723,827 (the '827 patent") and Application No. 10/644,389 ("the '389 application"). Paper No. 1.

2. PRC-DeSoto International, Inc. ("PRC") is a real party in interest of the '389 application.

3. Advanced Chemistry and Technology, Inc. ("PBT") is a real party in interest of the '168 and '827 patents.

4. In declaring the interference, the Board accorded PRC benefit for Count 1 of Application No. 10/644,389, filed August 19, 2003 ("the '389 application"), Application No. 10/302,177, filed November 21, 2002 ("the '177 application"), Application No. 09/756,573, filed January 8, 2001 ("the '573 application"), issued as US Patent No. 6,509,418 on January 21, 2003, Application No. 08/928,972, filed September 12, 1997 ("the '972 application"), issued as US Patent No. 6,172,179, and Application No. 08/802,130, filed February 19, 1997 ("the '130 application"), issued as US Patent No. 5,912,319. Paper No. 1, p. 6. The relationship between these applications is shown in Exhibit 1003, a chart which also shows the relationship of Application No. 09/318,500 ("the '500 application").

5. As recited in the alternate priority chain, the relationship between the '500 application and the '177 application is ambiguous. Exhibit 1007.

6. As recited in the alternate priority chain, the relationship between the '500 application and the '389 application is incorrect as it improperly indicates that the '389 application is a continuation-in-part of the '500 application. Exhibit 1006.

7. Copendency requires that applications be pending, neither abandoned, nor issued as a patent, on the same date. As the '500 application issued as U.S. Patent 6,232,401 on May 15, 2001, and the '177 application was not filed until November 21, 2002, and the '389 application was not filed until August 19, 2003; neither one of the '177 and '389 applications was copending with the '500 application. Exhibit 1003.

8. The first paragraph of US Patent No. 6,509,418, issued from the '573 application, indicates that the '573 application is a CIP of the '500 application. Exhibit 1014. The '177 application is a continuation of the '573 application and the '389 is a continuation of the '177 application. Exhibits 1003 and 1006-1007.

9. 37 C.F.R. § 1.78(a) requires only that any prior application relied upon for priority benefit must name at least one inventor named in the later application and that the prior application must disclose an invention of an inventor named in each prior application that is claimed in the later application and that, in addition to the requirements set forth in 35 U.S.C. § 120, an identification of each prior application and their relationship be made within the statutory time period.

10. The fifth and sixth requirements are set forth in 37 C.F.R. § 1.78 (a)(2) and provide that an application claiming filing date benefit of a prior application:

(2) ... must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number ... and indicating the relationship of the applications ... [t]his reference must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application.

37 C.F.R. § 1.78(a)(2).

11. The '389 application (No. 6) was filed on August 19, 2003, as a continuation of the '177 application (No. 5); copendency between the applications has been established. Exhibit 1031. The '177 application (No. 5) was filed on November 21, 2002, as a continuation of the then-pending '573 application (No. 4), which did not issue until January 21, 2003. Exhibits 1007 and 1014. The '573 application (No. 4) was filed on January 8, 2001, as, *inter alia*, a CIP of the then-pending '500 application (No. 3), which did not issue until May 15, 2001. Exhibits 1014, 1032, and 1029. The '500 application (No. 3) was filed on May 25, 1999, and was a divisional of

the then-pending '130 application (No. 1), which did not issue until June 15, 1999. Exhibits 1028 and 1033. Thus, effective copendency for purposes of claiming priority existed. Exhibit 1003.

12. The '389 application was a continuation application under 37 C.F.R. § 1.53(b) filed with a declaration from, and named, the same inventors as the '177 application. Exhibits 1006, 1008, and 1010. The '177 application was a continuation application under 37 C.F.R. § 1.53(b) as a continuation of the '573 application. Exhibit 1007. The '573 application was a continuation-in-part of the '500 application, which was a divisional of the '130 application. Exhibits 1028 and 1032.

13. The benefit of priority flowing from the '130 application through the '972, '573, and '177 applications to the '389 application was accorded by the Board and is unchallenged. Paper 1, p. 6, and Paper 22, page 2.

14. The '500 application is a divisional of the '130 application, filed under 37 C.F.R. § 1.53(b), having an identical specification. Exhibit 1028.

15. The PTO issued a Notice to File Missing Parts dated June 16, 1999, with a due date of August 16, 1999, for response, in connection with the '500 application. The Applicants responded on July 16, 1999, paying the necessary filing fee and surcharge. Exhibit 1034. The PTO granted the '500 application the filing date of May 25, 1999, as indicated on the face of U.S. Patent 6,232,401, which issued from the '500 application. Exhibit 1029.

16. The transmittal for Application No. 10/644,389 directed amendment of the specification to recite a priority chain that included a claim for the benefit of the '500 application by its application number and indicates that the '389 application is a CIP of the '500 application. Exhibit 1006, paragraph 9, page 2.

17. The '389 application is a continuation of the '177 application which is a continuation of the '573 application, which is a continuation-in-part of the '500 application and also claims the benefit of priority to the recited provisional applications, 60/182,396 and 60/215,548. Exhibits 1003, 1009, 1032, and 1035.

18. The relationship between the '177 and '500 applications recited in the '177 application is ambiguous and not necessarily correct. Exhibits 1003, 1022, ¶28, 1023, ¶33, and 1027, ¶13.

19. Reference to the prior-filed '500 application (No. 3) was made in the transmittal for the '389 application (No. 6), which reference was necessarily made within four months of the actual filing date, which transmittal directed amendment of the first paragraph to recite "[t]his application [the '389 application] is ... also a continuation-in-part of U.S. Patent Application No. 09/318,500." Exhibit 1006, paragraph 9, page 2.

20. Reference to the prior-filed '500 application (No. 3) was made in the transmittal for the '177 application (No. 5), which reference was necessarily made within four months of the actual filing date, which transmittal directed amendment of the first paragraph to recite "[t]his application is ... also a continuation-in-part of U.S. Patent Application No. 09/318,500." Exhibit 1007, paragraph 9, page 2.

21. Section 1.78 (a)(3) provides in part:

If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented after the time period provided by paragraph (a)(2)ii) of this section, the claim under 35 U.S.C. 120 ... for the benefit of a prior-filed copending non-provisional application ... may be accepted if the reference identifying the prior-filed application by application number ... was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120 ... for the benefit of a prior-filed application must be accompanied by: (i) The reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section to the prior-filed application, unless previously submitted; (ii) The surcharge set forth in § 1.17(t); and (iii) A statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was intentional.

37 C.F.R. § 1.78(a)(3).

22. If the Office determines that the '177 application requires amendment and that Rule 1.78 does not specifically provide for such amendment under the present circumstances, PRC petitions the Board under 37 C.F.R. § 1.182 in accordance with the discussion in the submitted petition under Rule 1.78 (Appendix 5) to amend the '177 application as directed (Appendix 6). This amendment of an abandoned intermediate application to contain a specific reference to an earlier-filed application is in accordance with 35 U.S.C. § 120, when it is determined to be necessary. *Sampson v. Comm'r of Patents and Trademarks*, 195 USPQ 136 (D.D.C. 1976). Upon determination by the Board that this petition is necessary, the Patent Office is authorized to charge Deposit Account No. 06-0916 the requisite fee of \$1,410.00 for this petition under 37 C.F.R. § 1.17(t) as well as any additional fees that may be necessary.

23. Authorization to charge Deposit Account No. 06-0916 the requisite fee under 37 C.F.R. § 1.17(t), \$1,410.00, is provided in Appendix 3 submitted herewith.

24. Authorization to charge Deposit Account No. 06-0916 the requisite fee under 37 C.F.R. § 1.17(t), \$1,410.00, is provided in Appendix 5 submitted herewith.

25. The first paragraph of the '573 application (No. 4), as filed on January 8, 2001, states:

This application is a continuation-in-part of U.S. Patent Application No. 08/928,972 filed September 12, 1997, which is a continuation-in-part of now U.S. Patent No. 5,912,319. Also, this application is a continuation-in-part of U.S. Patent Application No. 09/318,500 filed May 25, 1999, which is a division of now U.S. Patent No. 5,912, 319. This application also claims the benefit of U.S. provisional application no. 60/182,396 filed February 14, 2000 and U.S. provisional application no. 60/215,548 filed June 30, 2000.

26. The Request for Corrected Filing Receipt, dated June 12, 2001, recited, *inter alia*, the correct relationship between the '500 and other applications, namely, "[t]his application [the 09/756,573 application] is also a CIP of 09/318,500 05/25/1999 PAT 6,232,401 which is a DIV of 08/802,130 02/19/97 PAT 5,912,319." Exhibit 1026.

27. The '177 application (No. 5) was a continuation of the '573 application (No. 4) under 37 C.F.R. § 1.53(b); the '177 application was filed on November 21, 2002. Exhibit 1007.

28. Messers Makrogiannis and Uhl intended the amendment directed in the application transmittal to convey that the '177 application (No. 5) was a continuation of the '573 application (No. 4) and that the '573 application was a continuation-in-part of the '972 application (No. 2) and the '500 application (No. 3). Exhibits 1023, ¶¶33, 37, and 40 and 1027, ¶¶13, 15-16, and 18.

29. To the best of Mr. Makrogiannis's knowledge, neither he nor anyone affiliated with PRC were aware that the alternative chain of priority, which involves the '500 application, had any deficiency until a defect was discovered by interference counsel after the interference was declared. Exhibit 1027, ¶17. To the best of Mr. Uhl's knowledge, neither he nor anyone affiliated with PRC were aware that the alternative chain of priority, which involves the '500 application, had any deficiency until a defect was discovered by interference counsel after the interference was declared. Exhibit 1023, ¶39.

30. To the best of Mr. Lambert's knowledge, neither he nor anyone affiliated with PRC were aware that the alternative chain of priority, which involves the '500 application, had any deficiency until a defect was discovered by interference counsel after the interference was declared. Exhibit 1022, ¶34.

31. The sole priority issue that arose during the prosecution of Application Nos. 09/756,573, 10,302,177, and 10/644,389 was whether certain claims in the '573 application were supported by the specification of Application No. 08/802,130, as the USPTO considered the '389 application as a continuation-in-part of the '130 application.

APPENDIX 3

PATENT
Customer No. 22,852
Attorney Docket No. 08303.0042-06000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Jonathan D. ZOOK *et al.*) ATTN: Office of Petitions
)
Application No.: 10/644,389) Group Art Unit: 1711
)
Filed: August 19, 2003) Examiner: Duc TRUONG
)
For: SEALANTS AND POTTING)
FORMULATIONS INCLUDING)
MERCAPTO-TERMINATED)
POLYMERS PRODUCED BY THE)
REACTION OF A POLYTHIOL)
AND POLYVINYL ETHER)
MONOMER)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION UNDER 37 C.F.R. § 1.78(a)(3) TO ACCEPT AN
UNINTENTIONALLY DELAYED CLAIM FOR DOMESTIC PRIORITY**

In a pending interference, *Zook v. Zook*, Patent Interference No. 105,555 (MPT), it has been noted that an alternative priority benefit chain, not the basis of priority in the interference, appears to include some errors. Applicants hereby submit this petition under 37 C.F.R. § 1.78(a)(3) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 120.

The above-referenced application includes a valid priority claim under 35 U.S.C. § 120 to a benefit chain, namely, to Application No. 10/302,177, filed November 21, 2002, now abandoned, which is a continuation of Application No. 09/756,573, filed on January 8, 2001, now U.S. Patent 6,509,418, which is a continuation-in-part of Application No. 08/928,972, filed

September 12, 1997, now U.S. Patent 6,172,179, which is a continuation-in-part of Application No. 08/802,130, filed February 19, 1997, now U.S. Patent 5,912,319.¹

Application No. 10/644,389's priority claim involving Application No. 09/318,500, filed May 25, 1999, now U.S. Patent 6,232,401, however, is in error as it indicates that the above-referenced application, serial No. 10/644,389 ("the '389 application"), is a continuation-in-part of Application No. 09/318,500. The '389 application also erroneously sets forth the relationship of U.S. Provisional Application Nos. 60/182,396 and 60/215,548. The '389 application is not a continuation-in-part of Application No. 09/318,500, it is instead a continuation of 10/388,177, which is a continuation of Application No. 09/756,573, which is, *inter alia*, a continuation-in-part of Application No. 09/318,500, which itself is, *inter alia*, a divisional of Application No. 08/802,130. Application No. 09/756,573 also claims the benefit of the recited provisional applications.

According to 37 C.F.R. § 1.78(a)(2)(ii), the reference to the prior-filed application was to be submitted during the pendency of the later-filed application and within the later of four months from the actual filing date of this application or sixteen (16) months from the filing date of the prior-filed application. As this application was filed on August 19, 2003, and the '500 application was filed on May 25, 1999, the later of four months from the filing date and sixteen months from the filing date of the prior-filed application is four months from the filing date, namely, December 19, 2003.

¹ While the filing date of Application No. 10/302,177 is recited in error as November 21, 2001, not 2002, the reference required under 35 U.S.C. § 120 and 37 C.F.R. § 1.78 to claim the benefit of priority requires identification by application number and by the relationship between the applications. 35 U.S.C. § 120; 37 C.F.R. §§ 1.14 and 1.78. This requirement was met despite the incorrect recitation of the year in which the '177 application was filed.

Verified Statement

Applicants hereby state that the entire delay between December 19, 2003, and the date of this petition was unintentional, in accordance with 37 C.F.R. § 1.78(a)(3)(iii).

Applicants first learned that there might be an issue of ambiguity in the recited priority claim involving Application No. 09/318,500 in connection with a pending interference, Patent Interference No. 105,555 (MPT), declared July 10, 2007, and included in its list of proposed motions a "motion with petition to the Board to accept an unintentionally delayed claim for the benefit of a prior-filed application under 37 C.F.R. § 1.78(a)(3), with proposed amendment to involved application no. 10/644,389 to properly claim benefit of priority to application no. 09/318,500 or other appropriate relief." Applicants sought authorization for a motion, instead of petitioning the PTO immediately, as they understood Applicants must seek relief "in the form of a motion" under the Board's Standing Order. The motion was authorized by Paper 22, filed August 29, 2007.

Required Reference

Applicants provide herewith an amendment to the specification of the above-referenced application to insert the reference required by 35 U.S.C. § 120 and 37 C.F.R. § 1.78(a)(2)(i), specifying the prior-filed application by its series code, serial number, and indicating the relationship between these applications. Applicants further correct the error in the filing date of Application No. 10/302,177. As amended, the first paragraph of the application entitled "Cross-Reference to Related Applications" will read:

This application is a continuation of U.S. Patent Application No. 10/302,177, filed November 21, 2002; which is a continuation of U.S. Patent Application No. 09/756,573, filed January 8, 2001, now U.S. Patent No. 6,509,418 B1; which is a continuation-in-part of U.S. Patent Application No. 08/928,972, filed September 12, 1997, now U.S. Patent No. 6,172,179;

which is a continuation-in-part of U.S. Patent Application 08/802,130, filed on February 19, 1997, now U.S. Patent No. 5,912,319; said U.S. Patent Application No. 09/756,573 is also a continuation-in-part of U.S. Patent Application No. 09/318,500, filed May 25, 1999, now U.S. Patent No. 6,232,401; which is a division of said U.S. Patent Application No. 08/802,130, filed on February 19, 1997, now U.S. Patent No. 5,912,319; and said U.S. Patent Application No. 09/756,573 claims the benefit of U.S. Provisional Application No. 60/182,396, filed February 14, 2000, and U.S. Provisional Application No. 60/215,548, filed June 30, 2000, all of which are incorporated herein by reference.

Petition Fee under 37 C.F.R. § 1.17(t)

Applicants hereby authorize the PTO to charge the petition fee under 37 C.F.R. § 1.17(t) of \$1,410.00 to Deposit Account No. 06-0916.

Conclusion

As the requirements under 37 C.F.R. § 1.78(a)(3) for a petition to accept an unintentionally delayed claim for priority under 35 U.S.C. § 120 have been met, Applicants respectfully request that this petition be granted such that the Office recognizes this application's priority claim as set forth above. Please grant any extensions of time required to enter this petition, and should any additional fees be required for the consideration or acceptance of this petition, please charge them to Deposit Account No. 06-0916.

Respectfully submitted,

Date: November 29, 2007

By: _____

Wesley Derrick

Wesley Derrick
Reg. No. 46,659
650-849-6732

APPENDIX 4

PATENT
Customer No. 22,852
Attorney Docket No. 08303.0042-06000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Jonathan D. ZOOK *et al.*) ATTN: Office of Petitions
)
Application No.: 10/644,389) Group Art Unit: 1711
)
Filed: August 19, 2003) Examiner: Duc TRUONG
)
For: SEALANTS AND POTTING)
FORMULATIONS INCLUDING)
MERCAPTO-TERMINATED)
POLYMERS PRODUCED BY THE)
REACTION OF A POLYTHIOL)
AND POLYVINYL ETHER)
MONOMER)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

AMENDMENT

In connection with the concurrently submitted petition under 37 C.F.R. § 1.78(a)(3) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 120, please amend this application as follows:

Amendments to the Specification is presented at page 2 of this paper.

Remarks follow the amendment section of this paper at page 3.

AMENDMENT TO THE SPECIFICATION

Please amend the first paragraph of this application, entitled "Cross-Reference to Related Applications," as follows:

This application is a continuation of U.S. Patent Application No. 10/302,177, filed November 21, ~~2001~~ 2002; which is a continuation of U.S. Patent Application No. 09/756,573, filed January 8, 2001, now U.S. Patent No. 6,509,418 B1; which is a continuation-in-part of U.S. Patent Application No. 08/928,972, filed September 12, 1997, now U.S. Patent No. 6,172,179; which is a continuation-in-part of U.S. Patent Application 08/802,130, filed on February 19, 1997, now U.S. Patent No. 5,912,319; ~~and~~ said U.S. Patent Application No. 09/756,573 is also a continuation-in-part of U.S. Patent Application No. 09/318,500, filed May 25, 1999, now U.S. Patent No. 6,232,401; which is a division of said U.S. Patent Application No. 08/802,130, filed on February 19, 1997, now U.S. Patent No. 5,912,319; and said U.S. Patent Application No. 09/756,573 claims the benefit of U.S. Provisional Application No. 60/182,396, filed February 14, 2000, and U.S. Provisional Application No. 60/215,548, filed June 30, 2000, all of which are incorporated herein by reference.

REMARKS

This amendment is submitted concurrently with a petition under 37 C.F.R. § 1.78(a)(3) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 120. This submission satisfies the requirement under 37 C.F.R. § 1.78(a)(3)(i) to amend the specification to insert a reference to the application for which the benefit of priority is claimed. Applicants respectfully request that the Office recognizes this application's priority claim as set forth above in the directed amendment.

If there is any fee due in connection with the submission of this Amendment, please charge the fee to Deposit Account No. 06-0916. Please grant any extensions of time required to enter this Amendment and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

Date: November 29, 2007

By: Wesley Derrick
Wesley Derrick
Reg. No. 46,659
650-849-6732

APPENDIX 5

PATENT
Customer No. 22,852
Attorney Docket No. 08303.0042-05000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Jonathan D. ZOOK *et al.*) ATTN: Office of Petitions
)
Application No.: 10/302,177) Group Art Unit: 1711
)
Filed: November 21, 2002) Examiner: Duc TRUONG
)
For: SEALANTS AND POTTING)
FORMULATIONS INCLUDING)
MERCAPTO-TERMINATED)
POLYMERS PRODUCED BY THE)
REACTION OF A POLYTHIOL)
AND POLYVINYL ETHER)
MONOMER)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION UNDER 37 C.F.R. § 1.78(a)(3) TO ACCEPT AN
UNINTENTIONALLY DELAYED CLAIM FOR DOMESTIC PRIORITY**

In a pending interference, *Zook v. Zook*, Patent Interference No. 105,555 (MPT), it has been noted that an alternative priority benefit chain, not the basis of priority in the interference, appears to include some errors. Applicants hereby submit this petition under 37 C.F.R. § 1.78(a)(3) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 120.

The above-referenced application properly claims priority under 35 U.S.C. § 120 to a benefit chain, namely, to Application No. 09/756,573, filed on January 8, 2001, now U.S. Patent 6,509,418, which is a continuation-in-part of Application No. 08/928,972, filed September 12,

1997, now U.S. Patent 6,172,179, which is a continuation-in-part of Application No. 08/802,130, filed February 19, 1997, now U.S. Patent 5,912,319.

Application No. 10/302,177's priority claim involving Application No. 09/318,500, filed May 25, 1999, now U.S. Patent 6,232,401, however, is ambiguous and may allow one to mistakenly conclude that Application No. 10/302,177, is a continuation-in-part of Application No. 09/318,500. This is incorrect; Application No. 10/388,177 is instead a continuation of Application No. 09/756,573, which is, *inter alia*, a continuation-in-part of Application No. 09/318,500, which itself is, *inter alia*, a divisional of Application No. 08/802,130. Similarly, Application No. 09/756,573 also claims the benefit of the recited provisional applications.

According to 37 C.F.R. § 1.78(a)(2)(ii), the reference to the prior-filed application was to be submitted during the pendency of the later-filed application and within the later of four months from the actual filing date of this application or sixteen (16) months from the filing date of the prior-filed application. As this application was filed on November 21, 2002, and the '500 application was filed on May 25, 1999, the later of four months from the filing date and sixteen months from the filing date of the prior-filed application is four months from the filing date, namely, March 21, 2003.

Verified Statement

Applicants hereby state that the entire delay between March 21, 2003, and the date of this petition was unintentional, in accordance with 37 C.F.R. § 1.78(a)(3)(iii).

Applicants first learned that there might be an issue of ambiguity in the recited priority claim to Application No. 09/318,500 in connection with a pending interference, Patent Interference No. 105,555 (MPT), declared July 10, 2007, and included in its list of proposed motions a "motion with petition to the Board under 37 C.F.R. §§ 1.78(a)(3), 1.137(b) and/or 1.182 to enter an amendment to application no. 10/302,177 indicating priority information for

claim priority to application no. 09/318,500.” Applicants sought authorization for a motion, instead of petitioning the PTO immediately, as they understood Applicants must seek relief “in the form of a motion” under the Board’s Standing Order. The motion was authorized by Paper 22, filed August 29, 2007.

Required Reference

Applicants provide herewith an amendment to the specification of the above-referenced application to insert the reference required by 35 U.S.C. § 120 and 37 C.F.R. § 1.78(a)(2)(i), specifying the prior-filed application by its series code, serial number, and filing date and indicating the relationship between these applications. As amended, the first paragraph of the application entitled “Cross-Reference to Related Applications” will read:

This application is a continuation of U.S. Patent Application No. 09/756,573, filed January 8, 2001, which is a continuation-in-part of U.S. Patent Application No. 08/928,972, filed September 12, 1997, now U.S. Patent No. 6,172,179, which is a continuation-in-part of U.S. Patent Application No. 08/802,130, filed February 19, 1997, now U.S. Patent No. 5,912,319; said U.S. Patent Application No. 09/756,573 is also a continuation-in-part of U.S. Patent Application No. 09/318,500, filed May 25, 1999, which is a division of said U.S. Patent Application No. 08/802,130, now U.S. Patent No. 5,912,319; and said U.S. Patent Application No. 09/756,573 claims the benefit of U.S. Provisional Application No. 60/182,396, filed February 14, 2000, and U.S. Provisional Application No. 60/215,548, filed June 30, 2000, all of which are incorporated herein by reference.

Petition Fee under 37 C.F.R. § 1.17(t)

Applicants hereby authorize the PTO to charge the petition fee under 37 C.F.R. § 1.17(t) of \$1,410.00 to Deposit Account No. 06-0916.

Conclusion

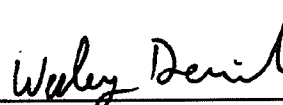
As the requirements under 37 C.F.R. § 1.78(a)(3) for a petition to accept an unintentionally delayed claim for priority under 35 U.S.C. § 120 have been met, Applicants respectfully request that this petition be granted such that the Office recognizes this application's priority claim as set forth above in the directed amendment.

Please grant any extensions of time required to enter this petition, and should any additional fees be required for the consideration or acceptance of this petition, please charge them to Deposit Account No. 06-0916.

Respectfully submitted,

Date: November 29, 2007

By: _____



Wesley Derrick
Reg. No. 46,659
650-849-6732

APPENDIX 6

PATENT
Customer No. 22,852
Attorney Docket No. 08303.0042-05000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Jonathan D. ZOOK *et al.*) ATTN: Office of Petitions
)
Application No.: 10/302,177) Group Art Unit: 1711
)
Filed: November 21, 2002) Examiner: Duc TRUONG
)
For: SEALANTS AND POTTING)
FORMULATIONS INCLUDING)
MERCAPTO-TERMINATED)
POLYMERS PRODUCED BY THE)
REACTION OF A POLYTHIOL)
AND POLYVINYL ETHER)
MONOMER)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

AMENDMENT

In connection with the concurrently submitted petition under 37 C.F.R. § 1.78(a)(3) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 120, please amend this application as follows:

Amendments to the Specification is presented at page 2 of this paper.

Remarks follow the amendment section of this paper at page 3.

AMENDMENT TO THE SPECIFICATION

Please amend the first paragraph of this application, entitled "Cross-Reference to Related Applications," as follows:

This application is a continuation of U.S. Patent Application No. 09/756,573, filed January 8, 2001, which is a continuation-in-part of U.S. Patent Application No. 08/928,972, filed September 12, 1997, now U.S. Patent No. 6,172,179, which is a continuation-in-part of U.S. Patent Application No. 08/802,130, filed February 19, 1997, now U.S. Patent No. 5,912,319; and said U.S. Patent Application No. 09/756,573 is also a continuation-in-part of U.S. Patent Application No. 09/318,500, filed May 25, 1999, which is a division of said U.S. Patent Application No. 08/802,130, now U.S. Patent No. 5,912,319; and said U.S. Patent Application No. 09/756,573 claims the benefit of U.S. Provisional Application No. 60/182,396, filed February 14, 2000, and U.S. Provisional Application No. 60/215,548, filed June 30, 2000, all of which are incorporated herein by reference.

REMARKS

This amendment is submitted concurrently with a petition under 37 C.F.R. § 1.78(a)(3) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 120. This submission satisfies the requirement under 37 C.F.R. § 1.78(a)(3)(i) to amend the specification to insert a reference to the application for which the benefit of priority is claimed. Applicants respectfully request that the Office recognizes this application's priority claim as set forth above in the directed amendment.

If there is any fee due in connection with the submission of this Amendment, please charge the fee to Deposit Account No. 06-0916. Please grant any extensions of time required to enter this Amendment and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

Date: November 29, 2007

By: Wesley Derrick
Wesley Derrick
Reg. No. 46,659
650-849-6732

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, **SENIOR PARTY ZOOK (PRC)**

MOTION 2, was served on the Junior Party Zook through its attorneys of record on this the 30th

day of November, 2007 as follows:

VIA ELECTRONIC MAIL:

Mark D. Schneider, Esq.
Douglas W. Sprinkle Esq.
Avery N. Goldstein, Esq.
Grifford, Krass, Sprinkle, Anderson & Citkowski, P.C.
Suite 330
2701 Troy Center Drive
Post Office Box 7021
Troy, Michigan 48007
Telephone: 248.647.6000
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e-mail: litigation@patlaw.com

Respectfully submitted,

By: /Jerry D. Voight/
Jerry D. Voight
Registration No. 23,020

Attorney of Record for Senior Party Zook